IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No. 5448 of 2005

Date of decision: 23.10.2006

Surinder Kaur

..... Petitioner.

Versus

Shiam Singh and Another

..... Respondents.

CORAM: HON'BLE MR. JUSTICE P.S. PATWALIA

Present:- Mr. Rajinder Goyal, Advocate
for the petitioner.

Mr. Raman Mohinder,Advocate
for respondent No.1.

P.S. PATWALIA, J. (ORAL)

The present revision petition has been filed challenging order dated 24.09.2005 vide which the trial Court allowed two applications for bringing on record the legal representatives of deceased Smt. Dwarki Devi and resultantly impleaded the petitioner as also respondent No.2 as legal representatives of Smt. Dwarki Devi.

Respondent No.1 in this revision petition is the plaintiff Shiam Singh, who had filed the suit for declaration to the effect that he is owner in possession of the land measuring 53 kanals 15 marlas detailed in the plaint and that decree dated 14.03.1995 passed by the Civil Court in favour of Smt. Dwarki Devi is null and void and has no effect on the rights of the plaintiff. In the suit plaintiff had impleaded Smt. Dwarki Devi as defendant

No.1 and one Rattan Kaur wife of Bhagat Ram as defendant no.2. On the death of Smt. Dwarki Devi two applications were filed for being impleaded as her legal heirs. One was filed by petitioner Surinder Kaur alleging herself to be the daughter of late Smt. Dwarki Devi. The second was filed by Rattan Kaur alleging herself to be the daughter of Jeevan Singh, who was the husband of Smt. Dwarki Devi. The trial Court on the basis of Full Bench Judgment of this Court in the case of **Mohinder Kaur v. Piara Singh, AIR 1981 (P&H) 130** and a Single Bench judgment of this case **Charanjit Singh and others v. Bharatinder Singh and others, AIR 1988 (P&H), 123** allowed both the applications. The relevant observations of the trial Court are as hereunder:-

> **"10-**The Hon'ble Punjab & Haryana High Court in Full Bench judgment in case titled as Mohinder Kaur
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> Versus Piara Singh, reported as AIR 1981 (Punjab & Haryana) 130 has observed that determination as to who is legal representative under order XXII Rule 5 CPC is only for the purpose of bringing legal representatives on record for the conduct of legal proceedings and does not operate as res judicata and inter se dispute between the rival legal representatives has to be tried and decided in separate proceedings.
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> 11- The Hon'ble Punjab and Haryana High Court in the judgment titled as Charanjit Singh and others versus Bharatinder Singh and others, reported as AIR 1988 (Punjab and Haryana), 123 has also observed as under:-

> "In view of this the proper course to follow is to bring all the legal representatives on record so that they vouchsafe the estate of the deceased for ultimate benefit of the real legal representatives. This would also avoid delay in disposal of the suit, in this case the death had occurred on 31st August, 1983 and the trial court took two years and eight months in determining as to which of the contesting parties is the legal representative and wrote 17 pages in passing the order. If the course suggested above had been followed, all this time and writing long order could have been avoided leaving the parties to get this matter settled in succession suit, on the basis of will or natural succession. I hope that the Subordinate Courts would keep this procedure/ course in view while deciding such type of applications."

12- It has been held by the Hon'ble Punjab and Haryana High Court in the judgment titled as Guwinder Singh and Ors. Versus Bawa Singh and Ors. reported as 2002(3) Civil Court Cases, 623 that the impleading of legal representative is only for the limited purpose that the estate of the deceased does not remain unrepresented. Only on the basis of being impleaded as party, such a party does not get any right of succession."

I have gone through the aforementioned judgments. The view taken by this Court in Charanjit Singh's case (supra), is that proper course for the trial Court is to bring all the legal representatives on record so that they vouchsafe the estate of the deceased for ultimate benefit of the real

legal representatives. This would also avoid delay in disposal of the suit. It may be noted that in the present case, the suit has remained pending for over five years.

The present revision has been filed by Surinder Kaur, who has also been impleaded as a legal representative. Interestingly the plaintiff has no grievance if both the applicants are impleaded as legal representatives and rather before me also learned counsel appearing for respondent No.1, plaintiff has reiterated that he has no grievance with the order made and wants to proceed with the suit for its expeditious decision.

Learned counsel for the petitioner however contends that Rattan Kaur had filed an agreed written statement in connivance with the plaintiff and petitioner's interest may thus suffer. I do not find any merit in this submission. The petitioner has been independently impleaded as legal representative and has her right to contest the suit which would not be affected in any manner by the written statement filed by Rattan Kaur.

Learned counsel for the petitioner has placed reliance on an order of the Hon'ble Supreme Court in **Ghat Talab Kaulan Wala v. Baba Ram Niwas (Civil Appeal No. 9638 of 2003)**.

A reading of the order would show that the claim in that case appears to be arising with regard to some property as Chela of one Baba Gopal Dass. It was under those circumstances that the Court ordered that the status of the deceased Baba Gopal Das as also Ram Niwas would have to be independently considered as a preliminary issue. Reliance was also placed on a Single Bench judgment of this Court in **Mehant Ram Parkash and another v. Smt. Shankari and others 1967 CLJ 883**

wherein a view was taken that when a dispute arises as to who is the legal representative of a deceased that question has first to be decided by the Court. I am of the opinion that in view of the subsequent judgment of the Full Bench the aforesaid decision can no longer be relied upon and it is the law laid down by the Full Bench which would bind this Court. In view of the ratio of law laid down by the Full Bench it is open to the trial Court to implead more than one legal representatives as the same is only to vouchsafe the estate of the deceased for the ultimate benefit of the real legal representative. Hence I find no error in the view taken by the trial Court.

Apart from this, I am of the opinion that in the present case, the controversy is as to whether the plaintiff have any title in the property and whether the earlier judgment obtained by Dwarki Devi is null and void or not. This question can be adjudicated by the Trial Court even if both the petitioner and respondent No.2 are impleaded as legal representatives. This is more so since the plaintiff in the suit is not aggrieved by the action of the trial court.

Consequently, I find no merit in this revision petition and the same is accordingly dismissed.

October 23, 2006 **(P.S. PATWALIA)**
dinesh **JUDGE**